



## **MEETING RESULTS- ZIONSVILLE BOARD OF ZONING APPEALS JANUARY 8, 2019**

The meeting of the Zionsville Board of Zoning Appeals occurred Tuesday, January 8, 2019 at 6:30 p.m. in the Zionsville Town Hall Room 105, 1100 West Oak Street, Zionsville, Indiana.

The following items were scheduled for consideration:

### **I. Continued Business**

<b>Docket Number</b>	<b>Name</b>	<b>Address of Project</b>	<b>Item to be considered</b>
2018-45-DSV	B. Bobbitt	465 W Poplar Street	<b>Conditionally Approved, as presented subject to vacation of the North/South Alley, and w/exhibits as filed – 5 in Favor, 0 Opposed</b> Petition for Development Standards variance in order to provide for the construction of a patio & garage addition which: 1) Exceeds the required lot coverage of 35%, to 42.7% in the Urban Residential Village Zoning District (R-V).

### **II. New Business**

<b>Docket Number</b>	<b>Name</b>	<b>Address of Project</b>	<b>Item to be considered</b>
2018-46-DSV	R. Pabst	8090 E 550 South	<b>Continued from January 8, 2019 Meeting to February 12, 2019 Meeting – 5 in Favor, 0 Opposed</b> Petition for Development Standards Variance in order to permit the establishment of a 1.83 acre lot. (Minimum lot size is 2 acres) in the Low-Density Single-Family Residential Zoning District (R1).

### **III. Other Matters to be considered:**

<b>Docket Number</b>	<b>Name</b>	<b>Address of Project</b>	<b>Item to be considered</b>
2017-11-DSV	Fischer Homes	Ansley Park	Status of Amended Plat
2018-19-DSV	Wildwood Designs	2720 S 875 East	Status of Commitments
2018-24-UV	M. Villanueva	7300 Hunt Club Road	Status of Commitments
2018-29-SE	A. Davis	775 E & SR 32	Status of Right to Farm
2018-37-DSV	N. Laviolette	9886 E 100 South	Status of Commitments
2018-34-SE	Zionsville Underground	91 S Main Street	Status of Commitments/Plan of Operation
2018-39-UV	Wheat Holdings LLC	10890 Bennett Parkway	Status of Commitments

2018-40-DSV	Wheat Holdings LLC	10890 Bennett Parkway	Status of Commitments
2018-31-SE & 2018-32-DSV	A. Safa	6925 E SR 32 (Estimated)	Status of Right to Farm & Commitments
2018-41-DSV	D. Miller	8370 E 300 South	Status of Commitments
2018-42-SE & 2018-43-DSV	J. Marshall	6475 S 275 East	Status of Right to Farm
2018-45-DSV	B. Bobbitt	465 W Poplar Street	Status of Alley Vacation

Respectfully Submitted:  
Wayne DeLong AICP  
Town of Zionsville  
Director of Planning and Economic Development



**Petition Number:** 2018-45-DSV

**Subject Site Address:** 465 W Poplar Street

**Petitioner:** Brian Bobbitt

**Representative:** Jerry Schafer

**Request:** Petition for Development Standards variance in order to provide for the construction of a patio & garage addition which:  
1) Exceeds the required lot coverage of 35%, to 42.7%  
in the Urban Residential Village Zoning District (R-V).

**Current Zoning:** R-V Residential Village Zoning District

**Current Land Use:** Single-family residential

**Approximate Acreage:** 0.16 acres

**Zoning History:** None

**Exhibits:** Exhibit 1 – Staff Report  
Exhibit 2 – Aerial Location Map  
Exhibit 3 – Proposed Site Plan  
Exhibit 4 – Petitioners Exhibits  
Exhibit 5 – Petitioners proposed Findings of Fact

**Staff Presenter:** Wayne DeLong, AICP, CPM

### **PETITION HISTORY**

This Petition will receive a public hearing at the January 8, 2019, Board of Zoning Appeals meeting.

### **PROPERTY HISTORY**

The property is comprised of approximately 0.16 acres of Lot 88 in Cross' Fourth Addition to the Town of Zionsville. Staff is not aware of any prior variance requests for this property.

### **ANALYSIS**

The 0.16-acre parcel is currently improved with an approximate 952 square foot single-family dwelling built circa 1960 and an approximate 240 square foot attached carport with an attached approximate 64 square foot shed. The existing single-family dwelling appears to have less than 15-feet, zero (0) inch aggregate side yard setbacks and therefore would be considered by the Town to be a legal non-conforming structure. As proposed, the Petitioner plans to demolish the dwelling and accessory structure(s) and is seeking approval to build a new two-story single-family home with a 3-car attached garage and outdoor living space. Utilizing front yard averaging, the new dwelling would meet all side yard setback requirements but would need a variance for lot coverage.

### **LOT COVERAGE**

The request seeks to exceed the 35 percent lot coverage maximum by 7.7 percent (of which 2% is permissible by right when using pervious material). Per the Residential Village District (RV) regulations, lot coverage standards states the maximum lot coverage is 37 percent (inclusive of the 2% bonus for pervious material use). The overall area developed prior to the adoption of the current Ordinance standards, and review of parcels and improvements in the area did reveal that some parcels in the area enjoy deviations from current coverage standards (but in no case was coverage discovered that exceeded 40.6%).

Additionally, in this particular case, the eastern property line is immediately adjoined by an unimproved alley (which in all likelihood would never be improved). If vacated, the subject site would enjoy an additional five (5) feet of lot width (resulting in an additional 700 additional square feet of lot area) and would result in a lot coverage of approximately 38.9% (of which 2% is permissible by right when using pervious material). Even with the vacation of the platted north-south alley, a variance from development standards would still be required for the proposed improvements.

In summary, Staff supports requests which provide for deviations from the lot coverage requirements when the request, generally speaking, follows this general reasoning: 1) the request is seeking to improve the site with an accessory use commonly enjoyed by other properties in the area (in this case, a patio/deck and garage), and 2) other properties within proximity to the parcel enjoy deviations from the maximum lot coverage requirements (to the east, west, south and north). Given the previously mentioned characteristics, Staff is in support of a request to exceed the lot coverage to a total of 40% (with 2% of that coverage being constructed of approved pervious materials), with the condition that a request be completed to

vacate the north-south alley, with the Town causing recordation of the same. Without the vacation, the requested lot coverage would be atypical for the area, in the opinion of Staff.

#### **PROCEDURAL – VARIANCE TO DEVIATE FROM STANDARDS**

The Board of Zoning Appeals shall hear, and approve or deny, all variances from development standards of the Zionsville Zoning Ordinance. A variance from development standards may be approved only upon written determination that:

- (a) The approval will not be injurious to the public health, safety, morals, and general welfare of the community:*
- (b) The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner:*
- (c) the strict application of the terms of the zoning ordinance will result in an unnecessary hardship in the use of the property:*

Proposed Findings of Fact are attached for the Board of Zoning Appeal's consideration.

#### **STAFF RECOMMENDATIONS**

Staff recommends approval of the design standards variance included in Docket #2018-45-DSV, supporting the contemplated improvements as proposed, with the condition that the Petitioner cause the Town Council to consider the vacation of the north-south alley located between Poplar Street and east-west alley north of Cedar Street.

#### **RECOMMENDATION MOTION**

I move that Docket # 2018-45-DSV design standards variance in order to provide for the construction of a patio & garage addition which 1) Exceeds the required lot coverage of 35%, to 42.7%, (all as illustrated on the site plan attached to this report), in the R-V Residential Village Zoning District for the property located at 465 W Poplar Street be (Approved as filed, based upon the findings of fact / Approved as recommended by Staff / Denied/ Continued) as presented.

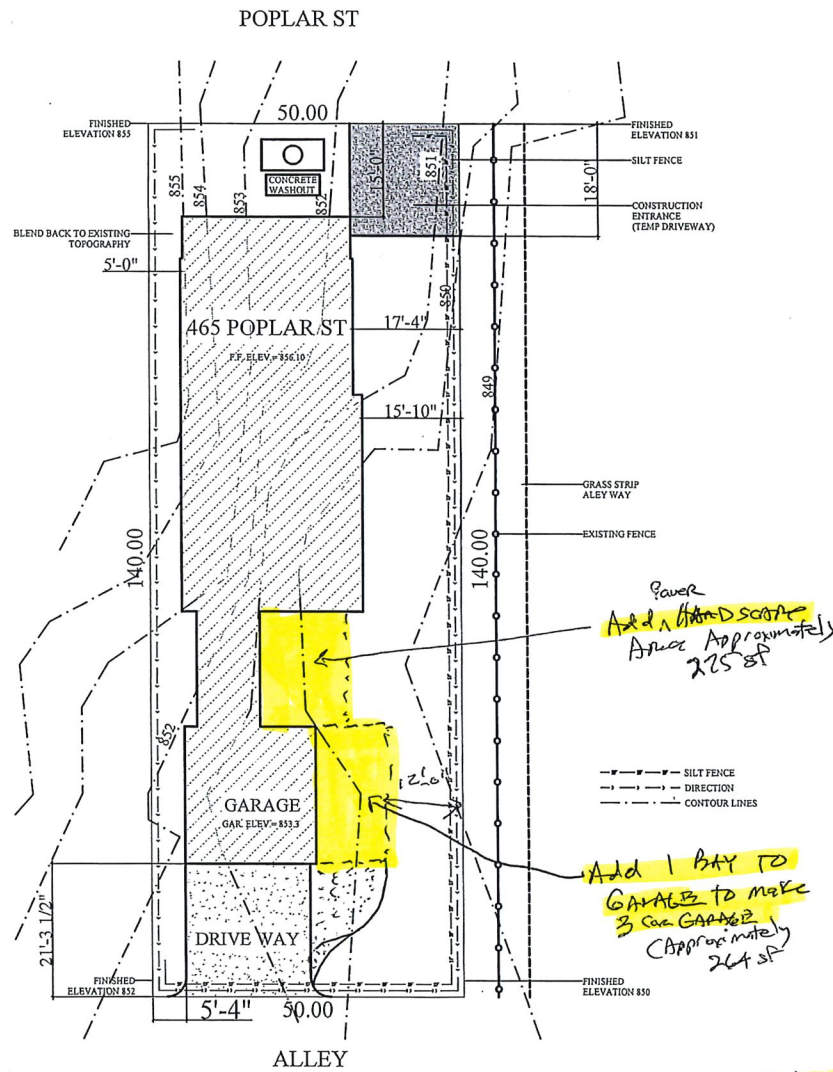


Exhibit 2

# 465 POPLAR ST

LOT AREA: 7000 SF

LOT COVERAGE 34.9%



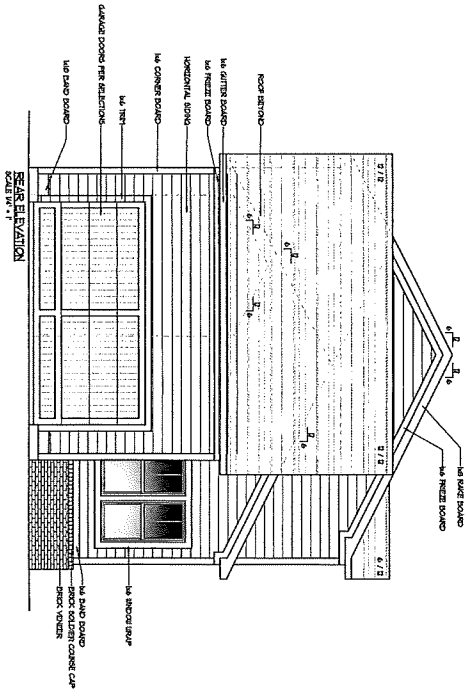
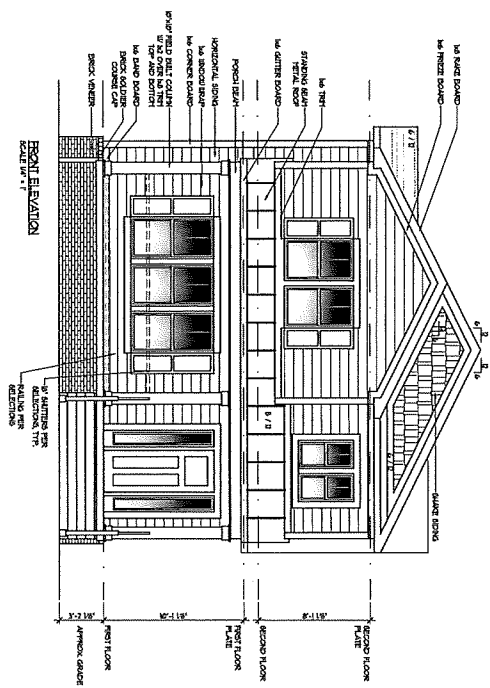
Total Addition  
539 SF  
+2.7%

Exhibit 3

SCALE: 1" = 20'



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EXTERIOR ELEVATIONS  
SCALE 1/4\"/>

Exhibit 4

SQUARE FOOTAGE	
FIRST FLOOR	1736 SF
SECOND FLOOR	891 SF
TOTAL	2627 SF
GARAGE SLAB	439 SF

ALL DIMENSIONS ARE GIVEN IN FEET & INCHES. DIMENSIONS IN PARENTHESES ARE GIVEN IN FEET & INCHES. DIMENSIONS IN PARENTHESES ARE GIVEN IN FEET & INCHES. DIMENSIONS IN PARENTHESES ARE GIVEN IN FEET & INCHES.

The Bobbitt Residence

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1980 East 116th Street  
Suite 1206  
Carmel, IN 46032  
Nathan - 317.557.3518  
Dean - 317.408.8999  
www.mcginisdesigngroup.com

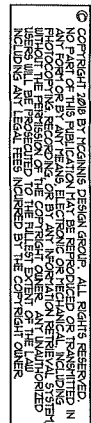
1.0

Designed For:  
Owner: Custom Home

Scale:  
1/4" = 1'-0"

Date:  
03.11.18

Eric Nottic,  
Architect



SQUARE FOOTAGE	
FIRST FLOOR	= 736 SF
SECOND FLOOR	= 881 SF
TOTAL	= 2617 SF
GARAGE SLAB	= 438 SF

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1980 East 116th Street  
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[www.mcginisdesigngroup.com](http://www.mcginisdesigngroup.com)

**TOWN OF ZIONSVILLE BOARD OF ZONING APPEALS  
BOONE COUNTY, INDIANA**

**PETITION FOR VARIANCE OF DEVELOPMENT STANDARDS**

**FINDINGS OF FACT**

1. The grant (**will / will not**) be injurious to the public health, safety, morals, and general welfare of the community because: We are ~~improving~~ improving the property, removing an older home and replacing with a new energy efficient home.
2. The use or value of the area adjacent to the property included in the variance (**will / will not**) be affected in a substantially adverse manner because: Demolition of a 1000 sq ~~foot~~ older home and building a new 2600 sq home, which will be a visual improvement and increase the value of the property significantly.
3. Strict application of the terms of the zoning ordinance (**will / will not**) result in unnecessary hardships in the use of the property because: When designing a home for empty nesters wanting to build a home to retire + grow old in requires more sq ft for a first floor master, when adding in the traditional 1st floor amenities and a needs for functional family gathering spaces and a 3rd car garage, as well as outdoor living spaces exceed the current zoning ordinance.

**DECISION**

It is therefore the decision of this body that this VARIANCE petition is APPROVED/DENIED.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.



**Petition Number:** 2018-46-DSV

**Subject Site Address:** 8090 E 550 South

**Petitioner:** Reasa Pabst & Gregg Roberts

**Representative:** Reasa Pabst & Gregg Roberts

**Request:** Petition for Development Standards Variance in order to permit the establishment of a 1.83 acre lot. (Minimum lot size is 2 acres) in the Low-Density Single-Family Residential Zoning District (R1).

**Current Zoning:** Low-Density Single-Family Residential Zoning District

**Current Land Use:** Single-family Residential

**Approximate Acreage:** 3.83 overall acres (resulting parcels will be 2.0 acres and 1.83 acres in size)

**Zoning History:** This parcel was consolidated into the Town of Zionsville's jurisdiction in 2010. No prior petitions are known.

**Exhibits:**  
Exhibit 1 – Staff Report  
Exhibit 2 – Aerial Location Map  
Exhibit 3 - Petitioners Project Description  
Exhibit 4 – Petitioners Proposed Site Plan  
Exhibit 5 – Boone County Health Department Letter  
Exhibit 6 – Petitioners proposed Findings of Fact

**Staff Presenter:** Wayne DeLong, AICP, CPM

### **PETITION HISTORY**

This petition will receive a public hearing at the January 8, 2019, Board of Zoning Appeals meeting.

### **PROPERTY HISTORY**

The property is comprised of a 3.83 acre tract. Staff is not aware of any prior variance requests for this property.

### **ANALYSIS**

The 3.83-acre combined parcel is currently improved with a circa 1880's dwelling (addition constructed circa 1960's) with a detached accessory structure and a corn bin. As proposed, the Petitioner desires to split the parcel to create two (2) parcels, one being a vacant 2.0 acre parcel and the other containing the existing single-family dwelling and accessory structure would become a 1.83 acre parcel.

### **LOT SIZE**

Per Article 2, Table 3, the minimum R1 Rural Residential District lot size when utilizing a well and septic system is 2 acres, therefore the Petitioner must obtain a variance from current Zoning minimum requirements. As contemplated, each parcel would contain the minimum amount of required road frontage and parcel depth. No other zoning related development issues are identified based on the facts presented as part of the petition.

This area is comprised of parcels which vary in size (from 1.25 acres to parcels in excess of 100 acres); there is no established theme as to lot size which reflects the Zoning District minimum of two (2) acres. With this in mind, Staff would note that parcels along County Road 550 South, being directly south and further east of the contemplated 1.83 acre parcel are between 1.25 and 1.57 acres in size, as well as parcels along County Road 800 East, being south of the contemplated 1.83 acre parcel are between 1.69 and 1.81 acres in size. Given that the requested parcel size is already established in the area, Staff is supportive of the petition as filed.

### **PROCEDURAL – VARIANCE TO PERMIT THE ESTABLISHMENT OF A 1.83 ACRE PARCEL UTILIZING A SEPTIC SYSTEM**

The Board of Zoning Appeals shall hear, and approve or deny, all variances from development standards of the Zionsville Zoning Ordinance. A variance from development standards may be approved only upon written determination that:

- (a) The approval will not be injurious to the public health, safety, morals, and general welfare of the community:*
- (b) The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner:*
- (c) the strict application of the terms of the zoning ordinance will result in an unnecessary hardship in the use of the property:*

Proposed Findings of Fact are attached for the Board of Zoning Appeal's consideration.

#### **STAFF RECOMMENDATIONS**

Staff recommends approval of the design standards variance included in Docket # 2018-46-DSV, as filed.

#### **RECOMMENDATION MOTION**

I move that Docket # 2018-46-DSV design standards variance in order to permit the establishment of a 1.83 acre lot, which results in a deviation from the required minimum 2 acre lot size, within the Low-Density Single-Family Residential Zoning District (R1) for the property located at 8090 E 550 South, be (Approved as filed, based upon the findings of fact / Denied/ Continued) as presented.

#### **PROCEDURAL NOTES**

As the parent tract was created prior to 1999, the division of the parcel is permissible to occur without the filing of a Plat with the Plan Commission, nor the conducting of a public hearing. Any future division of either the parent tract or the newly created parcel will require the involvement of the Plan Commission (and additional development standards variances).

Based on correspondence with the Boone County Health Department (Health Department) dated November 28, 2018, a location on the contemplated tract has been identified which supports an in-ground septic system. While the Health Department, based on the submitted information, is supportive of the location, deviating from the minimum lot size of two (2) acres could, in the future, result in the need to install a mound septic system in the event that adequate acreage is no longer available to facilitate a conventional in-ground septic system (in the event that the second system is required to be installed to replace a failed system). Additionally, reducing parcels to less than the minimum lot size of two (2) acres has the potential to reduce opportunities for routing perimeter drains associated with septic systems. While neither of the points raised in this paragraph should be viewed individually as justifications to prohibit the contemplated division of the parent tract, the Petitioner should be fully aware that actions taken based on the granting of the variance could potentially foreclose future opportunities related to waste disposal and drainage that could have otherwise existed if the parent tract had not been divided.

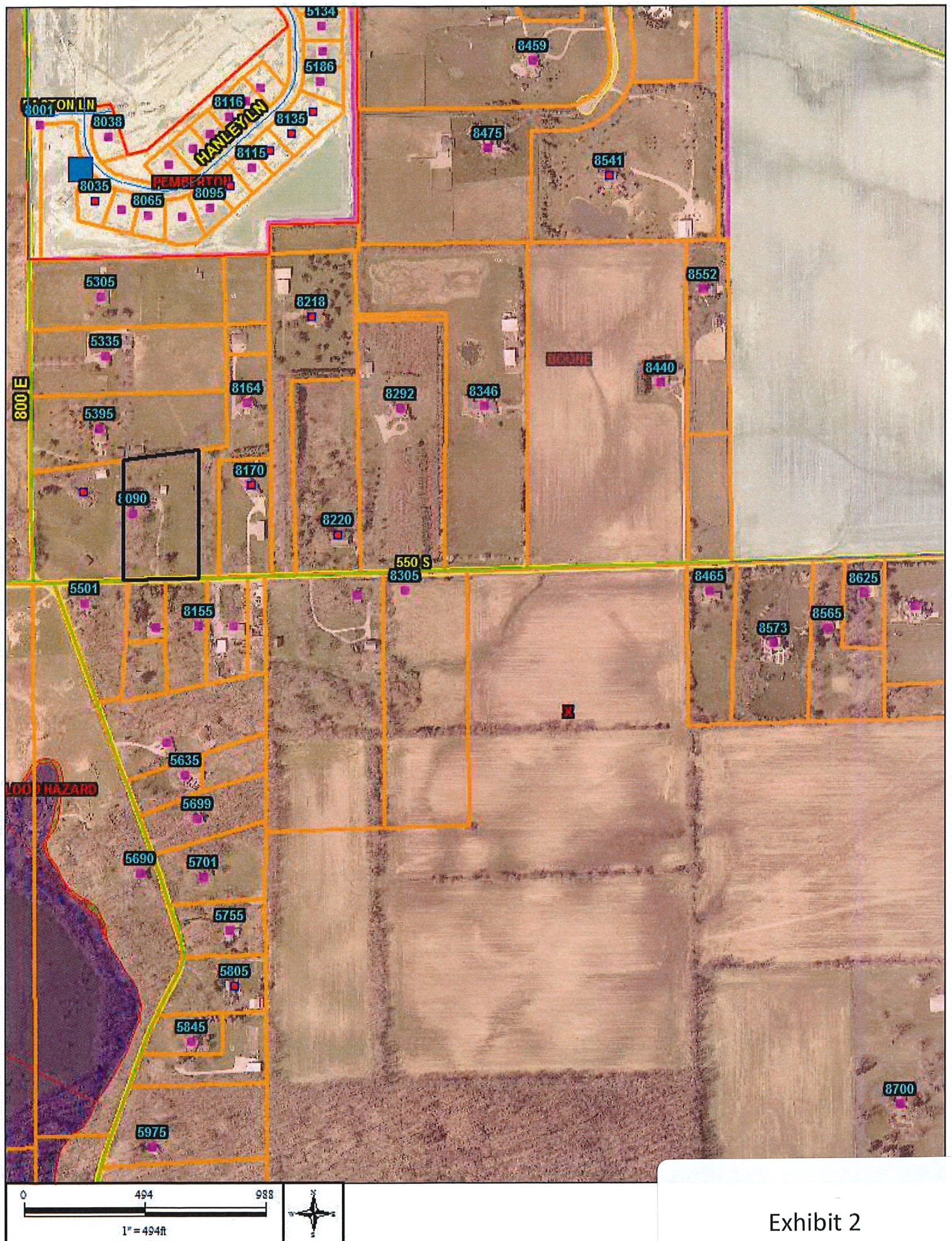


Exhibit 2

January 1, 2019

Zionsville Town Hall  
1100 West Oak Street  
Zionsville, IN 46077

RE: **2018-46-DSV R. Pabst**

Dear Board of Zoning Appeals Members,

I am asking for a Development Standards Variance to do an administrative divide for the property located at 8090 E 550 S. My goal is to preserve the home that was built in the late 1800's and was our family home for over four decades. The proposed divide will create a 2-acre lot and the home will remain on the 1.833 acreage.

I have furnished a soil evaluation determining that a new septic can be placed on the 1.833 acre for the current home and a letter from the Boone County Health Department verifying the findings. It's my understanding that the property will conform to all other requirements needed for the divide.

I have included a photo of the home.



Thank you for your time and consideration concerning this matter.

Sincerely,

Reasa Pabst



# CERTIFICATE OF SURVEY

I, the undersigned, hereby certify that this survey and the associated surveyor's report were executed under my supervision and to the best of my knowledge, information, and belief were performed in accordance with the current Indiana Minimum Survey Standards, 865 IAC 1-12, for the type of survey as indicated herein, on the following described real estate:

RECORD LAND DESCRIPTION: (DEED RECORD 193, PAGE 902)

A part of the Northwest Quarter of Section 33, Township 18 North, Range 2 East in Boone County, Indiana, more particularly described as follows:

Beginning at a point on the South line of aforesaid Quarter Section, said point being 338.60 feet East of the Southwest corner thereof, continue thence Easterly along and with said South line 349.45 feet; thence Northwesterly deflecting left 88 degrees 30 minutes along an existing fence line a distance of 523.22 feet to an existing fence corner; thence in a Westerly direction deflecting left 97 degrees 05 minutes along an existing fence line a distance of 310.10 feet; thence Southwesterly deflecting left 78 degrees 06 minutes a distance of 495.84 feet to the Place of Beginning, containing 3.833 acres, more or less, but subject to legal highways, rights-of-way and easements.

Located in Eagle Township, Boone County, Indiana.

I further certify that points were found or set at the locations on the subject real estate, as shown, and that this survey correctly shows the location of all visible easements of which the undersigned has been advised, and all visible encroachments, if any, across the established survey lines.

CERTIFIED December 4, 2018

Jonathan E. Hause, P.L.S.  
Professional Land Surveyor  
Indiana No. LS20600040



## SURVEYOR'S REPORT

In accordance with Title 865, Article 1, Rule 12, of the Indiana Administrative Code (formerly Title 864, Article 1.1, Chapter 13), establishing minimum standards for the practice of land surveying in Indiana, currently in effect, the following observations and opinions are submitted regarding the various uncertainties in the location of the lines and corners established on this survey as a result of:

- a) Variations in the reference monuments;
- b) Discrepancies in record descriptions and plats;
- c) Inconsistencies in lines of occupation;
- d) Random Errors in Measurement (Relative Positional Accuracy);

The purpose of this survey was to retrace and monument the boundaries of the Past Parcel as described in Deed Record 193, Page 902, as recorded in the Office of the Recorder of Boone County, Indiana per instructions from the client.

The survey was controlled by the following monuments:

- 1.) A Harrison Monument was found marking the Southwest corner of the Northwest Quarter of Section 33, T18N, R2E. This monument was set by the Boone County Surveyor's Office. This monument replaced a PC nail which was located 5.3 feet East and 1.1 feet South of the current monument. The Boone County Surveyor's Office placed the Harrison Monument "over a stone found", even though the tie and states "This corner is not specifically identified as being marked by a stone in the old BCS stone records". This creates an uncertainty of 5.41 feet in the location of this corner.
- 2.) A railroad splice was found marking the Southeast corner of the Northwest Quarter of said Section 33. This monument has been held by other surveys in the area and appears to be the best evidence of the corner. Uncertainty in this monument - 0.50 feet.
- 3.) The monuments shown hereon as found. These monuments agree with each other and the described boundaries of said Past Parcel. They do not agree with the location of the Southwest corner of the Northwest Quarter of said Section 33 (Item 1 above). These monuments are consistent with the type of monuments set by Surveyors in the past, however no Survey was found. Uncertainty in these monuments - 0.50 feet.

The basis of bearings for this survey is based upon GPS Observations performed on November 29, 2018, with the South line of the Northwest Quarter of said Section 33, bearing North 88 degrees 29 minutes 27 seconds East.

Discrepancies in record descriptions and plats are as follow:

- 1.) The commencing call of the subject parcel calls East 338.60 feet, this distance measures North 88 degrees 29 minutes 27 seconds East 344.34 feet as currently monumented by the Boone County Surveyor's Office (see Item 1 above). This creates a discrepancy of 5.74 feet in the location of the Point of Beginning of this Parcel.

Inconsistencies in lines of occupation are as follow:

- 1.) An existing fence was found to vary from 0.7 feet West of to 0.3 feet East of the West line of the Subject Tract.
- 2.) An existing fence was found to vary from 0.2 feet North of to 3.9 feet South of the North line of the Subject Tract.
- 3.) An existing fence was found to vary from 7.5 feet East of to 0.2 feet East of the East line of the Subject Tract.

As a result of the above observations, it is my opinion that the uncertainties in locations of the lines and corners established on this survey are as follows:

- a) Variance in reference monuments: As Noted Above
- b) Discrepancies in record descriptions and plats: As Noted Above
- c) Inconsistencies in lines of occupation: As Noted Above
- d) Relative Positional Accuracy (RPA) of the corners of the subject tract established by this survey is within the specifications of a rural survey (+/- 0.26 feet plus 200 parts per million) as defined in I.A.C. 865.

Exhibit 4

SHEET NO. 1 OF 2 SHEETS PROJECT NO. 18S697		RETRACEMENT SURVEY RONALD & BETTY PABST PT, NW 1/4, SEC. 33, T18N, R2E, EAGLE TOWNSHIP, BOONE CO., IN		No.      Date      Revisions	DRAWN BY: JLH CHECKED BY: WEJ DATE: 12/04/2018 SCALE: 1" = 50'	105 N. MERIDIAN ST. LEBANON, IN 46052 PHONE: (765) 482-5141 INFO@HAUSESURVEYINGANDENGINEERING.COM  A SERVICE DISABLED VETERAN OWNED SMALL BUSINESS
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### NOTES:

- 1.) All physical improvements hereon are shown as they were located in the field on November 29, 2018.
- 2.) This Document contains Two (2) Pages, both are required for this to be a Survey.

# BOONE COUNTY HEALTH DEPARTMENT

116 W. WASHINGTON STREET - LEBANON, IN 46052

[www.boonecounty.in.gov/health](http://www.boonecounty.in.gov/health)

ENVIRONMENTAL DIVISION  
SUITE B201  
(765) 483-4458  
(765) 483-5243 FAX



BOONE COUNTY  
HEALTH DEPARTMENT

NURSING & VITAL RECORDS DIVISION  
SUITE B202  
(765) 482-3942  
(765) 483-4450 FAX

November 28, 2018

Reasa Pabst  
164 Olivette St.  
St. Johns, FL 32259

Dear Mrs. Pabst,

This office received a set of soil borings dated November 25, 2018 for the lot located at 8090 E 550 S in Zionsville. The soil borings were taken by Mark McClain. In general, the soil borings for this lot are suitable for an in-ground septic system as long as no soil disturbance occurs in the soil boring area between the date of when the borings were taken and the date of when the septic system is installed. Drainage will not be need needed for this lot due to the seasonal high-water table.

Sincerely yours,

Clayton Campbell  
Environmental Health Specialist

**TOWN OF ZIONSVILLE BOARD OF ZONING APPEALS  
BOONE COUNTY, INDIANA**

**PETITION FOR VARIANCE OF DEVELOPMENT STANDARDS**

**FINDINGS OF FACT**

1. The grant (**will / will not**) be injurious to the public health, safety, morals, and general welfare of the community because:

Attached is a letter from the Boone County Health department and a certified soil test verifying that a new septic system can be safely placed in behind the home on the 1.833 acres. The property meets all other county requirements for the division. A permit has also been secured for removal of the pole barn located close to the division line on the survey.

2. The use or value of the area adjacent to the property included in the variance (**will / will not**) be affected in a substantially adverse manner because:

The existing home will remain on 1.833 acres and the division will create the vacant lot size in compliance with the zoning of a 2 acre minimum.

3. Strict application of the terms of the zoning ordinance (**will / **will not****) result in unnecessary hardships in the use of the property because:

A hardship will be created with the one time administrative divide of the property causing non-compliance for the zoning ordinance of the existing home.

**DECISION**

It is therefore the decision of this body that this VARIANCE petition is APPROVED/DENIED.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Pledge of Allegiance was said and attendance was taken by the Secretary.

Present: Greg Morical, Larry Jones, Julia Evinger, Steve Mundy, John Wolff.

Staff attending: Darren Chadd, Attorney.

A quorum is present.

Morical Good evening, and welcome to the January 8, 2019 Zionsville Board of Zoning Appeals. The first item on our agenda is the Pledge of Allegiance.

All Pledge.

Morical The next item on our agenda is attendance.

DeLong Mr. Morical?

Morical Present.

DeLong Mr. Jones?

Wolff Wait for it. He just walked in.

Evinger He just walked in, I thought.

Morical Okay, well we'll wait until he takes his seat.

DeLong Mr. Wolff?

Wolff Present.

DeLong Ms. Evinger?

Evinger Present.

DeLong Mr. Mundy?

Mundy Present.

Morical Great. The next item on our agenda is the election of officers. The first officer we would elect would be the PResident. As we have talked about, I'm going to resign at the end of February because we are moving inside of Indianapolis. Does anybody want my job? Are there any nominations from the floor? Any self, I'm happy to nominate one of you. Does anybody want to volunteer for the role? And, I will say, if nobody is currently ready to volunteer for the role, we can have the election next month, because I'm going to stay on the BZA through the end of February. If people want additional time. Hello, Larry. Thank you for coming. And, I got your text. If people want additional time to decide.

Mundy I'll just say that I do not want it. I don't want to follow in your big footsteps, but I think that there are others on the Board who will do a great job.

Morical I expect you're right, and I think they'll surpass me. So, which, what do you guys think?

Wolff Larry, we're talking about election of a new Chairman.

Jones Correct.

Wolff Are you getting shorter over there? What are you doing? That's how you got the Vice Chair, if I recall.

Morical He showed up late. Okay.

Jones Of all the meetings I show up on time to. You guys are killing me.

Morical We don't have to do it tonight. If people want to continue to reflect, we can kick the can down the road like our federal government and do it in February.

Wolff I would put my name in the hat to do it.

Morical You would? Excellent.

Wolff I would.

Morical Are there any other names in the hat?

Jones It's a very small hat.

Evinger I second John.

Morical That is fantastic. Okay. So, that's a nomination.

Mundy Second.

Morical It has been seconded. Okay, a couple times. All those in favor, please say aye.

All Aye.

Morical Any opposed?

[No response.]

Morical Congratulations. The next role is for Vice President. Larry has raised his hand once again. Thank you for your service Larry. Any other nominations from the floor? Hearing none, is there a second?

Wolff/  
Evinger Second.

Morical Okay. All those in favor of Larry continuing as the Vice President, please say aye.

Zionsville Board of Zoning Appeals  
January 8, 2019

All           Aye.

Morical       Any opposed? And, then we have the Secretary, right? Wayne, are you willing to serve once again?

DeLong       I am willing to serve once again.

Morical       Thank you for your service. Any other nominations for Secretary? Don't see any. Is there a second?

Mundy       Second.

Morical       Okay. All those in favor of Wayne continuing his service, please say aye.

All           Aye.

Morical       Okay. So, I am going to vacate my seat, John.

Wolff        Oh, wow.

Morical       And, I'm going to move to your seat.

Wolff        All right.

Morical       You get the gavel, and you get the special button. Don't touch the special button.

Jones        That's the training part to learn about the button.

Morical       We'll learn about the button later. Congratulations.

Wolff        Thank you.

Morical       You will hold the gavel sparingly.

Wolff        I've honestly never had a gavel at my disposal. This is exciting. The next item on our agenda is the approval of the December 11, 2018 minutes. Any comments from the group? Seeing none, I would entertain a motion.

Mundy        I move to approve the minutes.

Morical/  
Evinger       Second.

Wolff        Thank you. All those in favor, please say aye.

All           Aye.

Wolff        Any opposed?

              [No response.]

- Wolff            Motion carries. Next item on our agenda tonight is the continuance requests. Looking into the audience. Seeing none, moving on. Oh, I'm sorry. Let me pull this closer. The next item on our agenda is, let me go back. Any continuance requests? Seeing none, moving on. Continued business. Which leaves us to Docket#2018-45-DSV for 465 West Poplar Street. Will the petitioner please come forward and state your name and address and briefly describe what you are petitioning for?
- Shafer            Good evening. My name is Jerry Shafer. I'm a 27-year resident of Zionsville. I live at 6695 Beekman Place here in town, Stonegate.
- Wolff            Mr. Shafer, what do we have in front of us tonight?
- Shafer            You should have in front of you a plot plan of a home that is being constructed on this address, 465 West Poplar. On that drawing should be some areas that are delineated to represent the areas that we would like to request for additional lot coverage. There is an area adjacent to the existing 2-car garage, which we would like to make into a 3rd-car garage, and then there is an area adjacent on the east side of the home, and the area adjacent to what I would call the walkway, breezeway, and that area would be for exterior living area. Excuse me, exterior living space, which would be pavers and things like that. Give you a brief description, the Bobbitts are from the area originally, are moving back. They are empty-nesters. They have family here in town, a large family here in town, and would like to make this their permanent retirement home, and as such, a lot of the features that empty nesters would like to have would be first floor master and laundry facilities and nice family gathering spaces, so that incorporates all those things into the current plan, and it pushes it right at our current limit for 35%. So, these additional areas are the areas that we are asking for to have the additional requirement. There is also a, I think we are requesting a total of 42 point some percent and there is currently being 2% allowance for pavers already in there, so the net we are really asking for is 5.7% roughly, additional area, lot coverage area.
- Wolff            Thank you. And, as I saw it, the structure that is there is staying there. We're adding to it, correct?
- Shafer            That structure is coming down. The home that is up now is coming down and we are building a new home at that location.
- Wolff            Okay. So, I interpreted that completely wrong. Perfect.
- Shafer            Okay.
- Wolff            And, you mentioned, do you believe that the outdoor living space, do you have a more descriptive reference of what that material might be made out of?
- Shafer            It will be pavers. I think in the original plan we have some small concrete area, but things we're asking for under this petition would be paver areas that we would be adding on to the area to add a grill and just, you know, outdoor living space.

Wolff Okay. Any questions for the petitioner?

Evinger I have a question. Looking at the garage area where you're adding the third bay.

Shafer Yes, ma'am.

Evinger That drive isn't coming completely down. It kind of curves. Is that going to be, I guess, useful or would you need to be able to extend that drive to have it actually flush so it would be all 3 bays would be able to get down to the street?

Shafer We talked about that. We would have to go back to the street department if we wanted to do that under the current scenario. So, that's why we had it flare out like that, so we wouldn't have to go back to the street and get a different right-of-way, or additional request for right-of-way permit there.

Evinger Okay. That was my question, is just if that was going to be actually functional.

Shafer Yes. Right.

Evinger Thank you.

Morical Have you had the opportunity to read the staff report?

Shafer Yes. I did.

Morical So, that talks about the alley on the eastern boundary of the property, and the importance of having that alley vacated as part of this variance request.

Shafer Yes.

Morical What is the status of the vacation of that alley?

Shafer Yes. I met with Mr. Mitro last week and that petition has been completed and signed by the homeowners. It has been returned to Mr. Mitro. He is preparing to return that to me in the form that I need to do public notice with, and it is my understanding is we are meeting on February 4 meeting to have that approved.

Morical Okay. So, that's currently in process but not yet approved?

Shafer Correct.

Morical Would you, as the petitioner's representative be amenable to us conditioning our approval of the variance on that vacation being granted, and the deed being recorded?

Shafer Not saying I wouldn't. I guess my, I don't know the odds of that happening or not happening, so I guess I would be basing that on something that would be contingent and at this point, I understand it to be pretty much a done deal, just because it's not being used. It's been grass for twenty-something years, and I

- anticipate that to happen. If that didn't happen, what would be our alternative? If for some reason there was no - -
- Morical --If that didn't happen, you would not have the variance.
- Shafer Okay. It would be nice if we could request to have it. I'd be happy to do that, and continue with that process. I don't know that I want to make it contingent on that.
- Morical I think staff makes a good point that having that additional property alleviates the concern about the excess lot coverage.
- Shafer Okay.
- Morical And, it seems like you have got a receptive town that is amenable to doing that. I think at least from my perspective, you would need to follow through and have that actually occur in order for us, for me to be comfortable to support this variance. Hopefully, that would be done in short order and wouldn't be a problem.
- Shafer Okay. So, you would be proposing that is would be contingently approved, and then once that happens it would take place. So, we really wouldn't be able to move forward with those until after the February 4 meeting?
- Morical Until the vacation is approved and recorded.
- Shafer I gotcha. Okay.
- Wolff Any other questions for the petitioner?
- Mundy The petition to vacate the alley, is that multiple lots and homeowners that would be receiving a portion of the alley?
- Shafer There are two adjacent homeowners. My clients here, the Bobbits, and then the neighbor to the east, which is Lot#89, I believe. This also adjacent to that.
- Mundy So, the request is for all three of those to have the alley vacated behind their property.
- Shafer Just the two.
- Mundy Oh, just the two?
- Shafer It would be to the east and west of the alley. We are currently to the west of the alley, and then the home 445, I believe the address is, to the west or to the east of the alley, and those are the only two parcels that abut that property.
- Mundy Okay. Well, I drove by there and I agree with Wayne, I guess the staff assessment, that it's unlikely that the Town would wish to keep that as a useful alleyway.
- Shafer Okay.

- Wolff Any other questions for the petitioner? Seeing none, are there any remonstrators here tonight? Seeing none, can we have the staff report?
- DeLong Thank you. Staff is supportive of the petition to deviate from the Town's lot coverage requirements as listed in your ordinance. The lot coverage that is requested, the 42.7% is a bit higher than what you typically find in this area. When staff inventories the lot coverages, however, the resulting lot coverage once the vacation occurs, is a lot coverage that's within the numbers that you find in this area. Hence, I think the BZAs discussion being focused on why the alley vacation is actually pretty critical to the approval process associated with this variance. Staff does suggest, and the petitioner is moving forward with, that alley vacation, and that should happen in pretty short order. Generally those are pretty non-controversial when it comes to paper alleys that have functioned in grass for many, many years. But again, conditioning the variance approval subject to that outcome is certainly something that staff would see as a positive. Again, staff is supportive of the petition, and I would be happy to answer any questions.
- Wolff We have discussed this before. Just to be clear, pavers would be a pervious material?
- DeLong That is correct.
- Wolff Okay.
- Jones And, so as part of making the motion we have to add to it the completion of the alley vacation?
- Morical That has to be granted and recorded. But, Larry, if you'd like, I can make a motion.
- Wolff Is there any discussion amongst the group?
- Morical For the first time in six years.
- Wolff If no further discussion, I would entertain a motion.
- Morical Okay, I'll make a motion.
- Jones There you go.
- Morical I move that Docket#2018-45-DSV, design standards variance, in order to provide for the construction of a patio and garage addition which exceeds the required lot coverage of 35% to 42.7%, all as illustrated on the site plan attached to this report in the RV residential, and this report being the staff's report, in the RV residential Village zoning district for the property located at 465 West Poplar Street be approved as recommended by the staff, including that it be conditioned on the vacation of the alley to the east of the property, and that vacated alley then be recorded.
- Wolff Thank you. Is there a second?

Morical            Second.

Wolff             All those in favor, please say aye.

All                Aye.

Wolff             Those opposed?

                     [No response.]

Wolff             Motion carries.

Shafer            Thank you for your time this evening.

Wolff             Thank you. The next item on our agenda is new business, which was  
Docket#2018-46-DSV, for the property at 8090 East 550 South. Would the  
petitioner please come forward and state your name and address for the record?

Pabst             Good evening, my name is Reesa Pabst, and I am at 8090 East 550 South. I grew  
up in Zionsville, and I moved away. And, then my husband and I were coming  
back to purchase his parents', the family home, and finish restoring it. My  
husband passed away a couple months ago, so I have come back to do it myself,  
and I am just trying to split up the land, and I am wanting to put the house on the  
1.83 acres and trying to keep the home, because it is from the 1800s. A big  
portion of the house is from the 1800s. So, I'm just trying to keep it, and then I  
wanted to go ahead and do the divide on the land so that nothing can happen in  
the future where it could get divided down to something that would end up being  
a subdivision.

Wolff             Ms. Pabst, I'm sorry for your loss. Thank you.

Pabst             Thank you.

Wolff             I do have a couple questions for you.

Pabst             Okay.

Wolff             Specifically one. And, as I was looking at the petition and the division, and let  
me get my bearings straight. The house is in the, the existing house, is in what is  
proposed to be the western lot?

Pabst             Correct.

Wolff             Okay. And, I believe there is a detached garage just to the north of that.

Pabst             Yes.

Wolff             And there is another, when I looked at the aerial from the satellite, there was  
another structure that was there. What is that?

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Pabst            That's a shed, and we are actually, we have already pulled the permits to have that removed. It's just an eyesore, is what it is.

Wolff           Perfect. So, I guess my concern was that it would be right there on the property line, or proposed property line.

Pabst           Yes. Be removed.

Wolff           And, so we might have an issue there, but it looks like you've already taken care of that.

Pabst           Yes.

Wolff           Any other questions for the petitioner?

Jones           So then will the new lot get a separate driveway established for it?

Pabst           Yes. Yes. And, I did check into the code for that, and every, with the highway as far as what the, you know, requirements were. I met the requirements for all of that too. But, I also did the soil testing for a new septic.

Mundy          Is that a new septic for the existing home?

Pabst           Yes. Yes.

Mundy          Okay.

Morical          So, there is new septic for the existing home, and then whatever structure you're going to build on this, on the new parcel you would have a septic system for that, as well?

Pabst           Yes. Because it meets the two-acre requirement.

Morical          And, whatever septic system you build will have to be sized to meet whatever the size of the house is.

Pabst           Yes. I already had them, I had somebody out there that did all of that work.

Morical          Yes. I read the report and I noticed that the County said the soils are good, which is great, but the report did not necessarily conclude it's adequate space for a septic of this size.

Pabst           Oh, I'm sorry. He did mark it, and there were pictures of it, and it was for a 2800-square foot home.

Morical          Okay. So, and we don't deal really so much with septic. That will be a requirement as you go to get your building permit for the particular building you're going to build.

Pabst           Correct.

- Morical Did you see the language in the staff report kind of identifying some of the potential future issues as it relates to septic and drainage?
- Pabst I did. That it could possibly be above-ground at one time, and right now it has been approved for, and I have met with Clayton, as well, to be able to put the septic in beside the current one on the 1.83 without any issues.
- Morical Okay. I just wanted to make sure you saw what the staff - -
- Pabst --Yes. And, then I figure eventually City is going to be down there, I give it 5 more years maybe. And, everybody is going to have to do that, so, you know, if it fails them, they are just going to have to go to city. I'm not sure if I'll still be there.
- Wolff So, today we're talking specifically about splitting these two. This isn't, you know, obviously permission for the septic. That's a separate issue.
- Pabst No, no, no.
- Wolff Okay. So, we're all clear on that? Any other questions for the petitioner? Seeing none, are there any remonstrators here tonight? Please come forward and state your name and address for the record.
- Paddock Hi. My name is Shelly Paddock and I live at 8164 East 550 South. I share a property line with 8090 East 550 South. I hope the Council will vote no to the proposed variance.

The rezoning and recent development of the land around us has already caused the issue and runoff and drainage on our property. Sorry, I'm very nervous. I'm not sure why. Hi, Julia. I received the letter from Ms. Pabst presenting the idea that she is dividing the land in order to save the house. I'm not sure how that saves the house. She did not explain, or I didn't understand her reasoning. My concern is that Mrs. Pabst is trying to preserve the house at the expense of her neighbors. If you allow this proposed variance, one of my concerns is the lot will then be sold, then a house would be constructed on the lot, additional water will run off that lot to our property, causing my driveway to deteriorate quicker than it should. Right now, water stands on our driveway because we are a little bit lower than that lot, and the lot line, where we have mowed, and before when her in-laws lived there, and then her brother-in-law used to mow, and he and I would share mowing their front ditch line. So, but over the years it's gotten worse, and one of the trees is actually split on the property and it's kind of falling over because there is a lot of water right there. So, that was my concern.

We purchased our property and built our home in this area because we didn't want to live in a subdivision or in a neighborhood on a small lot. I appreciate that this parcel of land is now Mrs. Pabst's property and she has the right to enjoy it fully. However, I don't believe it should be at the expense of any of her new neighbors, and the landowners, who will be directly affected should a house be constructed on the lot in the future. I'm not an attorney, but perhaps if the goal truly is to preserve the house from being destroyed, Mrs. Pabst could check into having the deed revised with a restriction that the house must be preserved. I've

come across many properties with deed restrictions, but again, I am not a real estate attorney or any other kind of attorney.

I struggle with all the change that has happened on our street and the land that surrounds us. Over the years, many of the long-time landowners in this area have tried desperately to convey to you, the members of the Town Council, and to the Planning Commission, we welcome zoning that mirrors what currently is here. Multiple acres with one house. Not multiple homes on one acre. I appreciate the opportunity to share my thoughts, and I hope you will respectfully consider the ramifications to those of us who depend on you, and must live with your decision. Thank you.

Wolff            Mrs. Paddock, can I ask you a question?

Paddock        Sure.

Wolff            Sorry. I just wanted.

Paddock        I'm like a rabbit. I'm going to run. Sorry.

Wolff            Not out of here yet. Can you please again restate your address? Not for the record, but so I can try to find where you're at on the map.

Paddock        I'm 8164 East 550 South.

Wolff            Okay.

Paddock        The long driveway.

Wolff            So, you share on the eastern side of the property, you have a long piece of driveway, kind of common border there, then your house goes up?

Paddock        Correct.

Wolff            Okay. Great. Thank you. And, if I could, I want to try to make sure I understand your concerns. One would be, I think I heard two. Two primary ones. One is drainage. And, the other one was, I'm going to kind of lump into a density category. Sort of look and feel, dividing this lot from 4 acres to 2 acres.

Paddock        Exactly, it is. When we moved there, there was nothing, and now Pemberton is behind us and all of the new developments and the new subdivision was just approved at the corner of 875 and 550. And, when we get it, you know, there is just a few of us out there, but most of us are on more than 3 acres. A lot of them are on 5 acres, and we appreciate that they let us in. But we abided by the zoning that was there, in place when we got here. And, that's all we're asking, because what's happened is when Pemberton moved in and those houses started to be constructed, that waterway, which used to be just regular runoff and there is a ditch. There was an old farm. We've dug it up at least 4 or 5 times. We hit the gas line once, having a fire department come out. Thank God our neighbors, thank goodness our neighbors have a backhoe and can help us with this drainage, but before her in-laws passed away, we had talked to Ron, and told him, you

know, we had a little bit of his property that needed to be dug up because water stood there all the time. Have a giant willow tree there, I mean, and it is giant now because there is so much water.

Wolff            Okay.

Paddock        And, that's our biggest concern because water stands there almost year-round.

Wolff            Okay. Great. Thank you.

Paddock        Thank you.

Wolff            Anyone else would like to speak to remonstrate against? Please come forward and state your address for the record.

J. Paddock     Jim Paddock, at 8164 East 550 South. I'm not going to sit here and repeat everything my wife has spoken about, but a couple concerns is the drainage. I've been working on the drainage, and pretty well got it under control, but there is just a lot of water that runs off there. I'm afraid when they do build another house that's going to be another issue. So, that is a big concern. The other concern is, you know, the house being built on that property, where it's going to be, is going to be right on top of like my drive. And, you know, it's going to feel like a subdivision. You're building houses right on top of each other. And, if we had the intent of buying 3 or 4 acres when we put it in, and then get a variance for our home so we could, you know, subtract 2 acres from it so we could sell and make money, we would have done the same thing. But, that's not the intent out there. The intent out there is to build on some land and be a little bit away from the subdivision. Now, I've spoken with all the homeowners that are adjacent and around that property, and they are all for "no" on the variance. I mean, there is some here tonight. There is some that had other commitments tonight. But, it's definitely "no." So, I'm not sure how you guys vote on this. I haven't been involved that much. But, as of right now, we are all no for this to happen. And, I feel that this is just an intent to, you know, split it up and make money on both parcels, is what I'm thinking. Not necessarily to save the house. I'm all for saving the house. But there is different ways of doing that. Not dividing the land, building another home to make money on it. I'm not in for that. So, how you guys go about this, wish you a lot of luck, but I'm hoping it's, you know, honestly it's the neighbors around that has to deal with it.

Wolff            Certainly. Mr. Paddock, if I may ask you a quick question?

J. Paddock     Yes.

Wolff            You have an unusual lot. Did you build on that lot?

J. Paddock     I did.

Wolff            Okay. So, did you happen to get a variance for that lot?

J. Paddock     What?

- Wolff Do you recall having to get a variance for that lot?
- J. Paddock No. No. absolutely not. That was a little over 5 acres, and it was divided in half, roughly, 2.6, 2.4, plus there was an acre behind that I ended up buying just to keep it. You know, a little bit of cushion.
- Wolff Okay.
- J. Paddock And, there is actually a little bit of land behind that, that I may be in the process of buying it to keep a little bit of cushion. Not to sell to make money on it.
- Wolff So, the drainage issue that, it appears to be for the address that's in question is, it would be really affecting, and I'm not, I'm not saying this is not important, but it would be affecting your driveway portion of your property?
- J. Paddock Yes. Mostly in that one corner where my part of the first curve goes out. There is a lot of water that stands right there. Always has been. I have kind of worked with all the neighbors and Mr. Pabst at the time, because that was really bad, and spent a lot of money putting some good drainage in, and matter of fact, went on up towards that new subdivision with new field tile that I put solid in, instead of the old clay. So, you know, it's been some time. It's part of being out there. You know, it's not that big of an issue, but it is an issue that I think if you keep building on these lots like they are, it's going to be a problem. And, I know that all the new houses behind it, they are supposed to have their own drainage and all that worked out. And, hopefully that will work out, but it's not all built up yet either.
- Wolff Okay. Thank you.
- J. Paddock Thank you.
- Mundy Mr. Paddock, if you don't mind.
- J. Paddock Sorry about that.
- Mundy I'm trying to understand the impact in terms of drainage that a new house might cause. Is it just the fact that there is going to be, I don't know, a couple thousand feet that are now going to be impervious, or is there something other. You've got water problems now, I guess, but how does this compound that?
- J. Paddock I think because that two acres is fully on a big hill. The full length of that two acres. You go building a house on it, the driveway. You have the water runoff, the rainwater off, that you call it. I think all that will be going straight east off that hill, and just right over my drive onto my property, and if you'll look on the maps, there is actually another above drainage that runs and splits my property with Ferguson's, right next to me, straight east of. So, it's the Pabst, me and then the Fergusons, and there is kind of a normal drain that runs right there all the time. Like a little creek back in the days, you know?
- Mundy It's an open drain?

- J. Paddock      It's an open drain, and then our field tiles and all of our tiles we put in go clear to the road to drain, but I think when you build up on that with all the rain runoff, we are going to get a lot more come through there. And, over time, my driveway was actually, oh 6 to 8 inches above the land, you know, when we paved it. And, that is all filled in and the dirt is actually trying to come up over my drive, and that's how much just normal drainage comes through there. Do we have to deal with it? Absolutely. It's been there, but, I think building a new home it's going to make it even worse. But, the other concern was, if you're trying to save the house, you know, what's the deal with trying to deed off some property to sell to make money. It has nothing to do with saving the house. That is the biggest concern I have, more than just the drainage.
- Mundy            Thank you.
- Wolff             Are there any other remonstrators who would like to speak tonight? Please come forward and state your name and address for the record.
- Stark             May name is James Stark. 5395 South 800 East. We own 5 acres just north.
- Wolff             Mr. Stark, what are your concerns tonight?
- Stark             Well, we're just kind of a little 5-acre patch out there and we like it that way. We really don't want to be in a subdivision like Jim. No need to go over all that, but as far as the land is concerned, I wanted to make sure that you understood that that's a hill that goes down into that drainage ditch and valley that drains all that out through there. And that hill is a seep. It runs water out of it during the spring all the time. In fact, you come down behind my house down where Jim is talking, where we put the tile, and you can't drive a tractor down there because you'll get stuck, and it's real seepy. Septic system there, my septic system is kind of out away from where that hill, that fence line between me and their property is at, but it stays pretty wet. And, Jim's concerns are exactly right. I helped him when we tried to keep that drained out, but it's a problem, and they call that High Hill out there. Is where they built the subdivision. And High Hill, all that drained down through there. So, it's got county tile down through there at one time. They had problems with it years, and years.
- Wolff             Mr. Stark, how long have you been at your property? Guess.
- Stark             1988.
- Wolff             1988. And, similar to your neighbors, your concern is primarily drainage, and if we subdivide or if this lot is subdivided tonight, that it would create additional drainage issues?
- Stark             Yes. Yes.
- Wolff             Okay. Thank you. Any questions for the remonstrator?
- Jones             I got a question for Wayne. I'm kind of down here doing a little quick math. We're awful close to getting into the flag lot scenario. The - -

- DeLong Lot ratio.
- Jones Yes. The 3 to 1 kind of ratio.
- DeLong Yes. Certainly that's not something that's been requested, and the exact dimensions aren't identified, what these two lots, what they're resulting dimensions would be. This corridor of 550 South has a number of flag lot variances, lot depth to width throughout this corridor. But, sure, that is without knowing the final dimensions of what this, what it would look like, that's a potential risk that the petitioner would run.
- Jones Have we actually granted variances for flag lots out there, or is it just one of those things that were there prior?
- DeLong No, I'm sorry. Didn't mean to cut you off. There have been several variances that have been granted over the years. A number of parcels exist in this area that do have these dimensions. They exist prior to the area Plan Commission adopting the lot depth to width ratio, and certainly before the Town adopted that standard with the 2010 reorganization addresses like 8346, I believe have a variance for lot depth to width. There is another parcel on the south side of 550, I don't know the address exactly off-hand, but yes, there is a number of variances in this area.
- Jones But, those are variances granted for something that was pre-existing?
- DeLong No. These were newly created.
- Jones Newly created after the ordinance?
- DeLong Correct.
- Jones Okay. But that is part of the reason we sort of created the flag lot, the desire not to allow flag lots was because the combination of space for septic fields and drainage and just kind of everything everybody is talking about?
- DeLong Correct. I think that's why that standard was adopted and certainly when staff was looking at these requests, like the one that's in front of you this evening, it's reviewing what do the other neighbors enjoy. Do they enjoy flag lots, dimensions and other deviations, and then the conversation, which would happen later on this evening of, you know, this property asking to enjoy the same things and features that the neighbors enjoy.
- Morical Wayne, how far away from the Eastern property line could they build the house? What's the buffer that has to be there?
- DeLong Well, the zoning ordinance would say 5 feet. Is the minimum side-yard setback.
- Morical Okay.
- Wolff I would like to speak with the petitioner again, but before I do, I want to make sure, are there any other remonstrators that would like to speak? Please come forward and state you name and address for the record.

- Jordan My name is Christine Jordan. I live at 5455 South 800 East, on the corner lot.
- Wolff Southwest corner, or West - -
- Jordan --West of the Pabst property.
- Wolff Yes. Thank you. Ms. Jordan, what are your concerns?
- Jordan My concerns are just a green space buffer, in general. I know that the Fergusons were not able to come because of a commitment for sports, but she texted me and objects, and I would say that if their position has a bearing on this then, I don't know if we can ask for a continuance. I feel just that the whole leach field and the fingers, we put a pool in this summer, and there was big, not big, but a substantial process involved to be sure that our leach field was a certain amount of space, and it's actually on the upper side of our property. So, I'm just shocked based on the information that we received in our construction process that that could even be possible there, but I am not an engineer.
- And, the other point that I would just like to make, and I don't know that it's appropriate, but the timeline and the intention just does not add up. She resides in Florida, and her husband passed away before she approached her sister-in-law to purchase this property. He was terminally ill at the time that Mr. Pabst passed away unexpectedly, and I honestly, I mean, it is hearsay, but at the closing of that property with her sister-in-law, they told the attorney that they intended to split the property and flip it, and if that is what will happen, which I firmly believe that it will. She does not live here. She did not visit the property. I met her husband many, many times and he would come and stay for a month, and he said she would stay at her mother's in Carmel. She didn't like to come to the property. I am sorry to broach that, but I feel very strongly about her intentions. And, if you look at the timeline of the purchase contract versus the timeline that she is presenting, it is off.
- Wolff So, Mrs. Jordan, I think I heard one of your concerns was, you mentioned green space. I'm going to lump that into density, right? So, you think it might be too much to split the lot.
- Jordan Especially if you're on the opposite side of that, the Ferguson's home is positioned in a way that that is a huge green space buffer that they had in place whenever they built their home.
- Wolff The other I would mention is, and I think that's a valid concern. Thank you for sharing. The other thing I would mention is you suggested that you had concerns about how they would get the construction permits or go through the process because you had similar issues dealing with your pool this summer, and we don't have that in front of us. So, we're not looking at that. We don't know what that is. We don't know where the house would sit or any of that information. So, that's not what we're focusing on tonight. So, it's really just taking that what is one lot today and kind of splitting it up into two. So, that process will happen if it is approved tonight, and there is kind of other mechanisms for that. But, I think I

heard your primary concern was really that it would not fit the feel of the neighborhood. It would create, in your mind, a density issue.

Jordan Yes. We left a neighborhood for the area that we are in now.

Wolff I said neighborhood, but I meant the area. Yes.

Jordan Yes.

Wolff Okay. Thank you, Mrs. Jordan.

Jordan Thank you. I appreciate it.

Wolff I would like to speak with the petitioner again. Mr. Paddock, would you like to come back up? Was it Paddock?

J. Paddock Jim Paddock. 8164 550 South. Can I ask, what's the flag lots? What does that mean?

Wolff Flag lots is a term we use where, it's similar to what your lot is. It is shaped like a flag. So, there is a driveway that goes up, with kind of a narrow property line, and then it gets wider at the top.

J. Paddock Okay.

Wolff I don't think that's an issue here. At least not in front of me right now.

J. Paddock It's never been an issue. Go ahead. I mean, what do you mean by that?

Wolff What flag lots violate are, well, there are statutes within our zoning rules that discourage flag lots. But, that's not what we're talking about tonight. So, I don't think that's relevant.

J. Paddock So, that's the first time I've ever heard of anything like that.

Wolff Yes.

J. Paddock So, that's why I brought it up to see what the issue was.

Morical Like the parcel to the east of you, 8218 is a flag lot. Is a clear flag lot.

J. Paddock Oh, okay, east of Ferguson, you mean?

Morical You guys are 8164, right?

J. Paddock Yes.

Morical Yes. And, your property, the people that own the property to the east of you.

J. Paddock Right.

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Morical            That's a flag lot.

J. Paddock        Okay. Makes sense now.

Morical            So, we generally disfavor those, and to the extent they were created after the zoning code became applicable, then you need a variance. If it were created before the zoning code became applicable, then it's not a problem. It's a legal non-conformity.

J. Paddock        Okay. I just didn't want to miss something in case something else was coming up.

Morical            Yes. That's what we mean by a flag lot.

Wolff              Is Mr. Paddock not 8164? What is your address, Mr. Paddock? I'm sorry.

J. Paddock        8164 East.

Wolff              Okay.

J. Paddock        I'm the flag lot.

Morical            Next to the other flag lot.

Wolff              Next to 8218?

J. Paddock        Yes.

Morical            I don't think that's an issue here.

Wolff              Thank you. Flag lot is not a derogatory term, nor are they a protected class. Mrs. Pabst, would you please come forward? So, I think I heard a couple different concerns. One is drainage issue, and the other primary one was, and again, I may not be using the appropriate term, but density. It was taking one lot, and splitting it into two. Do you have any comments about that?

Pabst               I would just like to say that the 2-acre lot is the minimum out there. That's just standard. I mean, so I'm meeting the requirements for that. All I'm asking for is the variance for the house. The house is not obviously the drainage problem. So, all I'm asking for is for a variance to leave the house on the 1.8 acres. And, yes, it would save the house, because at that point nobody could actually do anything with that piece of property until City sewer and water came through where they wanted to tear the house down, and then they could possibly do something different with it. But, from what I understand from all of the different departments, nothing else could be done with the house. You know, they couldn't tear it down and build another one without coming and getting a variance for putting it on a 1.83 acres. So, I am trying to save the house. And, just for your information, my husband was still alive. He did not have terminal cancer. He died from an operation where he bled to death. And, we had bid on the house. He, my husband, signed on that house too. So, I don't know where you got your information from.

Wolff I really would like to focus - -

Pabst I apologize.

Wolff --No problem at all. A challenging situation, but I would really like to focus on what we're dealing with at hand, which is taking an approximately 4-acre lot and splitting it into 2 lots. And, so, I believe, as I understand the petition, you're right. The minimum lot size is 2 acres. So, it looks like if we did this, we got one lot that's in conformance, and then we would have a new lot with the existing structure, which is an older structure, that would require the variance because it is a 1.83 acre lot, which is about 0.17 acres short of what we need to be.

Pabst Correct. Yes, Sir.

Wolff Okay. Thank you. Can we have the staff report, Wayne?

DeLong Thank you. With certainly a lot of the dialogue this evening has covered staff's support of this petition and the staff, the Town's review of this petition, is primarily focused on the fabric of the area. Talking about the lot area, the lot dimensions, what do the other, what do the other property owners enjoy in this area? And, certainly from 800 East to 875 there are a number of lots that deviate from the minimum 2-acre lot size. There are a number of lots that enjoy deviations from your depth to width ratios, referred to tonight as the flag lot. But the ordinance talks about it as a depth to width ratio. And, so where staff looks at a request, we are looking at what, just like we do with lot coverage requests and other types of petitions that come in front of you. It is what do the neighbors enjoy? Certainly, the dialogue related to drainage, the dialogue related to density. These are almost routinely topics that are broached during these types of conversations. The BZA has been very well in tune with these conversations. Oftentimes you will work to work through those conversations. Sometimes the petitions are denied. Sometimes they are approved. But, that dialogue occurs routinely. But, specific to the staff review, we're focused on Article 2, Table 3, which is the lot size, and focusing again on what do the neighbors enjoy in the area, and as the aerial photograph indicates in front of you, the lot area, the lot dimensions. There are parcels that are near this site and in proximity to this site that enjoy the same requests, if not less than what is in front of you this evening. With that in mind, staff is supportive of the petition, and I would be happy to answer any questions.

Wolff Thank you, Wayne. Any questions for the staff?

Morical No, but I've got a couple of questions for the petitioner again, if you don't mind?

Wolff No I don't. Mrs. Pabst, will you come forward please?

Morical Mrs. Pabst, have you noticed the drainage issues that have been addressed tonight?

Pabst I have been married to my husband for 40 years, so I have known that property since I was 17 years old. And, there was actually a creek that went through all the

properties along there, including ours, and for some reason, the creek has not been kept the way it was when it used to flow down to the property to the west. And, so, I think that's a lot of the drainage problem to be honest with you. And, also we don't have any kind of things at the end of our driveway to let the water flow through. Any kind of, you know, we have a, most of the driveways around there are gravel, so, you know, we don't have a whole lot of problem with the washout like this gentleman does with his paved driveway. So, I think that's kind of common with anything around that area.

Morical            So, you noticed the drainage issues?

Pabst              I do not notice any drainage issues. We have, and as far as back behind the property being wet, I walked that back area with the soil gentleman after it had rained, and I was shocked that it was not as wet as it could have been. So, I thought that he would have a problem with the soil, but he said it was, you know, everything was fine. So, no I have not noticed a drainage issue. We are on a hill, so I have no issues with drainage, we're on that, but I do know, like I said, there used to be a creek that went down at the front of the road, that has not been there for several years now. And, if they're having a drainage issue, I would say that is probably is related to that fact that that has basically just been removed, and I don't know where all that water is going off to now.

Morical            Okay. So, a couple things. Did you have the opportunity to review the staff report?

Pabst              Yes, I did.

Morical            Okay. And, the staff report notes the procedure and process by which we act on variances.

Pabst              Yes, correct.

Morical            That is the petitioner, you, need to meet the burden of proof on the three different elements that are stated in the staff report.

Pabst              Correct.

Morical            One of those elements is that the use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner. Which is what this whole drainage thing is about. So, to the extent we were to grant the variance, split the two parcels, you build something on the two acres. It's on a hill. You don't have a drainage problem. You build something on the two acres that's going to deflect even more water. They say they're going to have an even greater drainage problem. That's a substantially adverse effect on their property.

Pabst              I don't feel that way. I don't feel that anything you put on that hill. I'm also actually personally taking a structure down now. So, I mean, I'm also taking a structure down that is, and there is a corn bin that I'm also removing.

- Morical            The purpose of splitting up the lots is to allow for a structure to be built on the two acres. Right?
- Pabst              Correct. My husband and I originally were going to build on that two acres, yes.
- Morical            Which is great.
- Pabst              Yes.
- Morical            If you build a structure on that two acres, it's going to deflect more water. It's going to cause additional drainage runoff to the east. The testimony that we have here tonight is that they've already got a drainage problem. If we were to grant this, and you build on top of the hill, or whoever buys the lot builds on top of the hill, it's going to exacerbate that drainage problem.
- Pabst              I do not feel like that would be a problem, no.
- Morical            Okay. So, you have the burden of proving that they're not going to be substantially adversely affected.
- Pabst              This is the first we have ever heard of the drainage problem.
- Morical            Okay. And, that's fine. So, that means you haven't had the opportunity to work through this issue with your neighbors.
- Pabst              No, no.
- Morical            What we've heard, one of the remonstrators tonight asked for the Fergusons, because they're not able to be here tonight, that we continue this to the next meeting. Everybody, either you or the remonstrators, have the right to one continuance.
- Pabst              Well, my problem is is that they're not here to ask for that continuance.
- Morical            No, but she asked for it. And, she has the standing. So, Mrs. Jordan has the standing to ask for that continuance, and I think that's going to benefit you, because if I had to vote on this right now, I'd say no, because you've got the burden of proof on those three elements. That one element of substantially adverse effect, you haven't yet been able to meet. So, I would encourage you, I'm inclined to suggest therefore that we grant the continuance for one month, and during that time, you work through the drainage issue, and hopefully in a way that's satisfactory to your neighbors, and come back to us again in February with a variance request that addresses this.
- Pabst              Well, can I ask you this, I sent out a letter with my name and phone number for them to call me if they had any concerns. Not one of them called me. So, do you think the concerns are really the water issue, or do you think the concerns are that they don't want a house being put on two acres that is legally allowed to be done?
- Morical            It's not legally allowed to be done.

- Pabst Well, it's two acres.
- Morical No, it's 3.83 acres. You've got one house on there now. If you want to, you could take that house down and build another house on there. If you want to be able to split this into 2 acres and 1.83 acres, you need our approval.
- Pabst Correct.
- Morical For you to get a variance, you have the burden of proving these 3 things. I agree with you, they're not interested in having this project move forward. I also believe that you have property rights, and we all have property rights, and as staff said, there are a bunch of other pieces of property similar to this around there. You're not creating anything new by this 1.83 or 2-acre issue. But, you are going to be, according to the testimony tonight, exacerbating a drainage problem. That's not acceptable. We're not going to approve you just doing that in a way that substantially adversely affects the neighboring piece of property. So, the burden is on you. I'm sorry they didn't reach out to you in response to your letter. I appreciate you sending out the letter because we always want to facilitate petitioners and the nearby property owners working through issues together instead of us having to make a decision. The reality is, you're the one that needs to get over that hurdle. Not them. You. So, either you meet that burden of proof, or you don't. And, right now, you haven't. So, we can either act, we've had a request for a continuance. We're going to grant that continuance. I would encourage you to work with these guys and figure out the drainage issue. So, whenever you come back next time, you can say, you know what, we came up with a way to address the drainage concerns.
- Pabst Let me ask you this, if he had a drainage issue, why didn't he bring pictures or something? Something for us to visualize this drainage issue.
- Morical Great question. But again, you have the burden of proof. They have raised the concern.
- Pabst The burden of proof of something I wasn't aware of. But, I mean, I will work with them. I have no problem with that. But, the question I have is, is I'm asking for 1.83 where the house is. That's not the drainage issue. The drainage issue is the two acres that could actually be separated.
- Morical You are correct. So, with these split into two parcels, you've got the right to build on the two acres.
- Pabst Correct.
- Morical If you build on the two acres, on top of the hill, it's going to exacerbate the drainage issue to the east.
- Pabst I'm not going to be, I don't know that I'll be building anytime soon.
- Morical If we grant this variance request, you would have the right to build a house on the two acres. If so, you know, it's X and Y and Z. Z causes the adverse effect. If we

grant this tonight, you'd have the right to do something that can cause that adverse effect.

Pabst I guess I'm still confused when the two acres would be legal. That's what I'm still confused about.

Morical It's not.

Jones Wait a minute. Isn't the issue that - -

Pabst --Yes it is.

Jones To create the 2-acre lot, you are creating a 1.83-acre lot that is non-conforming.

Pabst Correct.

Morical That's why you're here.

Pabst Which is on the other side, though. It's not in the drainage issue problem.

Jones But, you're creating a lot that doesn't meet the standard. You need the variance for the 1.83, not the 2.

Pabst Correct. And, that's what I was saying. The two acres is what they are saying is causing the drainage issue.

Wolff But, the two acres doesn't exist today.

Pabst Right.

Wolff It's 3.83 acres.

Pabst Okay.

Wolff That's what we're dealing with. And, so we need a variance to split that up. And, that variance is going to create a problem.

Pabst Yes.

Morical And, you've got the burden of proof of working through that, so I would encourage you to take the next month, because we are going to vote here on this continuance. I would encourage you to take the next month to work with your neighbors to address the drainage issue. Maybe talk to them about what your commitment would be to not build the house too far to the east. That is too close to the road. You can't subdivide this any further than the two if we were to grant that variance, and see if you can work through these issues with them. So, there is no risk of this becoming a subdivision. It's just going to be the one house on the two acres. There is a whole bunch of other houses like that. So, that's really not the, this density isn't really the issue. It's the drainage the adverse effect on the property to the east.

- Pabst I understand what you're saying, but, and there could be an issue with it being subdivided later, if somebody wanted to.
- Morical They would not have the right to do that. They would either need to come before us or the Plan Commission.
- Pabst Right, I understand that. But, if there was City water and sewer that came through there, is that, what could be done with that? I'm just curious.
- Morical Well, you can deal with the building department on that, but we're not going to work through those details with you, but I think what makes sense for us to consider is the continuance request. Unless, Mr. Paddock, you want to - -
- J. Paddock May I ask simple questions real quick?
- Morical Sure.
- J. Paddock I'll make it real quick.
- Morical Oh, John, actually you get to say sure.
- Wolff Sure.
- J. Paddock Jim Paddock, 8164 East 550 South. Do you have to do that every time you come up here? Is that the rule?
- Wolff We do record the meetings, and so then we know who is speaking.
- J. Paddock So, next time I'm up here I won't do it. Quick question, two questions. If the variance goes through on that 1.8-acre, and she's talking about the house is tore down, they will not be able to build on it unless there is another variance. Is that correct or incorrect? That is incorrect.
- Morical You're talking about if the house on the 1.83 acres is torn down, to build another house?
- J. Paddock To build a bigger house, they have to get a variance for that. No, it's already approved, correct?
- Morical Hold on a second. Let's let Wayne weigh in.
- DeLong The variance is requesting the establishment of a 1.83-acre lot. If this home that's on the lot was destroyed, the zoning would permit a new home to be built to replace the house that is lost.
- J. Paddock So, therefore that changes a little bit of things, too, there because that's still building another, you know, there is a house there under two acres. Which, we are against that, too. You know, we had to have at least two acres to build, so now you're trying to get a variance for that house to be okay under two acres. That's a problem for us.

Morical            So, in my, if you look at the aerial, and hopefully you've had the opportunity to look at the staff report.

J. Paddock        Yes, I have many times.

Morical            If you look at the aerial, big picture, there are a lot of lots about this size.

J. Paddock        But they're over two acres.

Morical            No, not on the south side of the street.

J. Paddock        What?

Morical            Right, Wayne?

DeLong            Correct. There is lot sizes that range from 1.25 acres, 1.8 - -

J. Paddock        --Right. Go back in history and time.

Morical            There is nobody more infallible than Wayne. So, the reality is there are lots - -

J. Paddock        --Back in history, they were building stuff on one or half acres too.

Morical            But right around here there are lots on two acres. So, the whole, you know, 1.83 is an issue. Two is an issue. No. We're not going to hold this up because of that. It's just not going to be the case. People have property rights. This makes sense except for the adverse effect on your property. You've identified two issues. Drainage, totally legit, and your concern of it being built too close to your driveway.

J. Paddock        Right.

Morical            Those are the two things that we would encourage you to work directly with her to try and resolve.

J. Paddock        And, the other thing is, on the creek she is talking about is the one along the side, it runs along the road out front. It's just the drainage ditch. So, there was no other creek that was there that always worked. Okay. And, the reason it wasn't behind her house at the time is because my drainage is working, that I've been working on.

Morical            And, obviously building a house on that hill is going to have an impact.

J. Paddock        Big time.

Morical            And, you've got historic drainage issues.

J. Paddock        Right.

Morical            Right, Larry? Important stuff.

- J. Paddock      We do have pictures too. Many pictures. A lot of pictures.
- Morical          Which is great. She has got the burden of proof. Will you work with her in good faith to try to address this issue?
- J. Paddock      Yes. We'll see what happens.
- Morical          Okay. So, talk to those two things. Try to see if you can work through the drainage and see if you can talk to her about where the house could be positioned, a new house, that wouldn't be problematic for your driveway.
- J. Paddock      Well, I think there we're probably wasting time. It's not for her to build the house. She's probably going to sell the lot. So, how would you go around dealing with that then?
- Morical          So, there would be a commitment as part of the variance that it would be - -
- J. Paddock      --So, if she would sell that lot afterwards, the commitment would stand in court?
- Morical          It would be recorded, and whoever bought it would be bound by that.
- J. Paddock      Okay.
- Morical          But be reasonable. Seriously.
- J. Paddock      I understand. I mean, we've been out there a long time. We can work with it.
- Morical          The legit issue is the drainage.
- J. Paddock      I used to work with her father-in-law quite a bit. I mean, it was no issue.
- Morical          Great.
- J. Paddock      It was just a wet problem.
- Morical          Well, let's see if we can figure out a way to deal with that.
- Evinger          If there is a problem with the ditch out front, you might check with the County and see what could be done too, from the County level.
- J. Paddock      Well, the County has worked on that, only every five years.
- Morical          But, it's the northeast corner that's got the real problem?
- J. Paddock      Yes. That's the normal drainage on top. Because a lot of water goes through her property onto ours. That's happened. It's there. You know, I built there knowing that. It is, it's a drainage problem.
- Morical          It's the way God made it. But, you've got the concern about an additional home that will exacerbate it, and she's got the burden of proof to show that her variance is not going to cause a substantially adverse effect.

J. Paddock Right.

Pabst Can I ask one question?

Morical Nope, you gotta do it in the microphone.

J. Paddock Thank you.

Morical Thank you.

Pabst May I ask if your property is in a flood zone?

J. Paddock It's definitely not.

Pabst Not in any kind of flood zone at all. Okay.

Wolff Okay. So, to formalize this, Mr. Jordan, did you ask for a continuance request? Right, did one of the petitioners ask for - -

? One of us will.

Wolff Okay. Thank you. Do we need a motion, or do they have the right?

Chadd I--they're allowed one by right, if I recall correctly.

Morical The only issue would be they may not have done it in time. So, we probably should vote on it just for -

? [Inaudible]

Morical We've enjoyed all of this. So, I don't want it to end.

Stark My name is James L. Stark, 5395 South 800 East.

Wolff Thank you, Mr. Stark.

Stark I just wanted to ask you boys if you understood what a seep is? Do you understand a seep?

Wolff I'm going to default to my drainage person.

Stark When they built my house, it's up on the hill. They dug the basement, and when the boys come over from Illinois to dig it, and the boy was down in the bottom of it and he said, "There is six springs down here in your basement running water." And, they took a pump and started pumping the water out. And, I've got a drain that runs down to daylight, and it runs water all the time. Now, the northeast portion of that two-acre lot, that's what a seep is, boys.

Morical Okay. Thank you.

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Jones            It's a sand vein. If we go around Michigan Road, there south of Pittman's property, in that thing that always takes the - -

Wolff            --Oh, sidewalk timber. Yes.

Jones            There is a seep. The water up on the top of the hill is running down through a sand vein comes out the side of the hill down low, and forms a creek that they can't stop because to do it you'd have to go all the way up in the subdivision and re-pipe it all the way out.

Wolff            What I think they did is they dug it up and ran tile. So, it's still there. It just goes underground now.

Jones            Yes. But then it fills in the tile and goes elsewhere.

Wolff            I think we need a motion.

Jones            About the seep?

Wolff            No.

Morical          Okay. I will make a motion. I move that we continue Docket#2018-46-DSV, R. Pabst, 8090 East 550 South to the February 12 meeting of the Board of Zoning Appeals.

Wolff            Is there a second?

Evinger/  
Mundy           Second.

Wolff            All those in favor?

All               Aye.

Wolff            Those opposed?

                    [No response.]

Wolff            Motion carries. Okay, next item on our agenda is other items to be considered. Do we need to do any of these on the record?

DeLong          No, I can just offer you a brief update. Villanueva, we are working through some language finalization on that. The Davis special exception has been recorded. We are waiting receipt of the copy. Lavallette is under our office's review currently related to language. We did have a meeting with Mr. Webb related to Wheat Holdings, and he is working on finalizing those commitments, and Soffa, Frandsen is working on that set of commitments, and the Miller petition is pending recordation currently. So, we are moving forward on a variety of those.

Wolff            Thank you for your diligence. Any other business? Seeing none, this meeting is concluded.